IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMARY SUIT NO.1551 OF 2003
WITH
SUMMONS FOR JUDGMENT NO.1117 OF 2003

Jyotsna Kishanbhai Valia & Anr. ..Plaintiffs.
Vs.
M/s. T.S. Parekh & Co. & Ors. ..
Defendants.

....

Mr. P.R. Gyani with Mr. V. Verma i/b M/s. Halwasia & Co. for the Plaintiffs.
None for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

20th July, 2007.

P.C. :

1. The Suit under Order 37 of the Code of Civil Procedure has been instituted for the recovery of monies lent and advanced. A loan of Rs.1,50,000/- was advanced by the husband of the First Plaintiff and the father of Plaintiffs 2, 3 and 4 vide cheque NO.946761 on 28th April, 2000. The predecessor-in-interest of the Plaintiffs expired in a road accident on 24th July, 2002 and the suit for recovery was instituted on 25th April, 2003 within a period of three years of the date on which the monies were lent and advanced. The second loan of Rs.50,000/- was advanced by a cheque bearing No.946762 dated 8th May, 2000. The Defendants

acknowledged receipt of the first loan by a receipt dated 29th April, 2000 (Exhibit B). The loan has been duly reflected in the accounts maintained by the predecessor in interest of the Plaintiffs. Extracts from the account are annexed at Exhibits A and C. Cheques towards the payment of interest furnished by the Defendants were dishonoured on presentation. A notice of demand was addressed on 10th April, 2003 to which there is no reply. The Plaintiffs have accordingly sued for the recovery of the monies lent and advanced. Interest at the rate of 18% per annum has been claimed on the first loan in view of the fact that the receipt at Exhibit B contains a statement that the loan will be paid with interest at the rate of 18% per annum. Since there was no agreement in respect of interest in respect of the second loan, no interest has been claimed prior to the institution of the suit thereon. The Defendants have been served with the writ of summons and have entered appearance.

2. When the writ of summons was sought to be served the advocate appearing on behalf of Defendants 1 and 3 to 6 furnished an intimation that the Second Defendant has expired. Accordingly, the Summons for Judgment has been taken out as against Defendant Nos.1 and 3 to 6.

3. No reply has been filed to the Summons for Judgment by Defendants 1 and 3 to 6. Counsel appearing for the Plaintiffs has tendered a compilation of original documents on the record. The claim of the Plaintiffs is based on a written contract at Exhibit B to the Plaint. Insofar as the second loan transaction is concerned, the issuance of a cheque for the payment of interest would be sufficient in the view of the Court to conclude that there was a written contract under which monies were lent and advanced by the Plaintiffs to the Defendants. The loan amounts have been duly reflected in the loan account of the Plaintiffs and despite receipt of the notice of demand, there was no reply thereto by the Defendants.

4. The Summons for Judgment is accordingly made absolute as against Defendants 1 and 3 to 6 and there shall be a decree as prayed, with the modification that the Plaintiffs would be entitled to interest at the rate of 9% per annum on the principal sum from the date of the suit until realization.